TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number	09/819,126
Filing Date	March 27, 2001
First Named Inventor	James H. Errico
Art Unit	2623
Examiner Name	SHEPARD, JUSTIN E

Total Number of Pages in This Submission **36**

Attorney Docket Number	7146.0107

ENCLOSURES *(check all that apply)*

- ☒ Fee Transmittal Form
  - ☒ Fee Attached
- ☐ Amendment / Reply
  - ☐ After Final
  - ☐ Affidavits/declaration(s)
- ☐ Extension of Time Request
- ☐ Express Abandonment Request
- ☐ Information Disclosure Statement
- ☐ Certified Copy of Priority Document(s)
- ☐ Reply to Missing Parts/ Incomplete Application
  - ☐ Reply to Missing Parts under 37 CFR1.52 or 1.53

- ☐ Drawing(s)
- ☐ Licensing-related Papers
- ☐ Petition
- ☐ Petition to Convert to a Provisional Application
- ☐ Power of Attorney, Revocation Change of Correspondence Address
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- ☒ Appeal Communication to TC **(Appeal Brief)**
- ☐ Proprietary Information
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- ☒ Other Enclosure(s) *(please identify below):*

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm	Chernoff, Vilhauer, McClung & Stenzel, L.L.P.
Signature	*[signature]*
Printed Name	Kurt A. Rohlfs
Date	January 21, 2009	Reg. No.	54,405

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Typed or printed name	Kurt A. Rohlfs	Date	January 21, 2009

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FEE TRANSMITTAL

for FY 2009

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($) 540	

Complete if Known

Application Number	09/819,126
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METHOD OF PAYMENT (check all that apply)

☐ Check ☒ Credit Card ☐ Money Order ☐ None ☐ Other (please identify) : _____

☒ Deposit Account Deposit Account Number: 03-1550   Deposit Account Name: Chernoff, Vilhauer, McClung & Stenzel

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FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
		Small Entity		**Small Entity**		**Small Entity**	
Application Type	**Fee ($)**	**Fee($)**	**Fee($)**	**Fee($)**	**Fee($)**	**Fee($)**	**Fees Paid ($)**
Utility	310	155	510	255	210	105	_____
Design	210	105	100	50	130	65	_____
Plant	210	105	310	155	160	80	_____
Reissue	310	155	510	255	620	310	_____
Provisional	210	105	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description	**Fee ($)**	**Small Entity Fee ($)**
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185

Total Claims	**Extra Claims**	**Fee($)**		**Fee Paid ($)**
_____ -20 or HP=	_____	x _____	=	_____

HP = highest number of total claims paid for, if greater than 20.

Multiple Dependent Claims

Fee ($)	**Fee Paid ($)**
_____	_____

Indep. Claims	**Extra Claims**	**Fee($)**		**Fee Paid ($)**
_____ - 3 or HP=	_____	x _____	=	_____

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	**Extra Sheets**	**Number of each additional 50 or fraction thereof**	**Fee ($)**	**Fee Paid ($)**
_____ - 100 =	_____ / 50 =	_____ (round up to a whole number) x	_____ =	_____

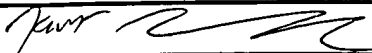### 4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	_____
Other (e.g., late filing surcharge) : **Appeal Brief**	$540

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	54,405	Telephone	503-227-5631
Name (Print/Type)	Kurt A. Rohlfs			Date	January 21, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant	:	Errico, James H.	Group Art Unit	:	2424
Serial No.	:	09/819,126	Examiner	:	Shepard, Justin E..
Filed	:	March 27, 2001	Attorney Docket	:	7146.0107
Customer No.	:	55648			
Title	:	AUDIOVISUAL INFORMATION MANAGEMENT SYSTEM			

APPELLANT'S BRIEF

Chernoff, Vilhauer, McClung, and Stenzel, L.L.P.
Suite 1600
601 SW Second Avenue
Portland, Oregon 97204

January 20, 2009

Mail Stop APPEAL BRIEF-PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

BACKGROUND

This brief is in furtherance of the Notice of Appeal, filed in this case on November 21, 2008.

The fees required under 37. C.F.R. § 41.20(b)(2), and any required petition for extension of time for filing this brief and fees therefore, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief comprises these subjects under the headings, and in the order, set forth below:

The final page of this brief bears the practitioner's signature.

REAL PARTY IN INTEREST

The real party in interest in this appeal is Sharp Laboratories of America, Inc., assignee of the captioned application.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences that will directly affect, be directly affected by, or have a bearing on the Board's decision in this appeal.

STATUS OF CLAIMS

A.   TOTAL NUMBER OF CLAIMS IN THE APPLICATION

There are 29 claims currently pending in the application.

B.   STATUS OF ALL CLAIMS

Claims canceled:	12, 16-24, 29-49, 54-56, 58, 65-69.
Claims withdrawn:	None.
Claims pending:	1-11, 13-15, 25-28, 50-53, 57, 59-64.
Claims allowed:	None.
Claims objected to:	1, 10, 25, 50, 57, and 60.

Claims rejected: 1-11, 13-15, 25-28, 50-53, 57, 59-64.

C. CLAIMS ON APPEAL

Claims 1-11, 13-15, 25-28, 50-53, 57, 59-64 are on appeal.

A copy of the claims on appeal is set forth in the Claims Appendix to this Brief.

STATUS OF AMENDMENTS

No amendment was filed after final rejection.

SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is generally directed to an audiovisual information management system and methods of using the same, and is most broadly recited in six independent claims, summarized below.

Independent claim 1:

In a first embodiment, a claimed method of selecting at least one of audio and video includes four steps. The first step is receiving user attribute information that includes user preferences arranged in hierarchical levels, including at least a first level and a second level, where the first level includes at least one preference and the second level includes at least two preferences. *See* specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11. Further, the second level includes preferences descriptive of one or more preferences of the first level at a finer level of detail, while the first level includes preferences that together encompass all preferences of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The second step is receiving program information corresponding to the audio and/or video, where the program information comprises attributes each corresponding to a respective one of the user preferences. The program information attributes also include hierarchical levels including at least a first level and a second level, where the first level includes at least one program information attribute and the second level includes at least two program information attributes. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104

line 11; p. 106 line 19- p. 107 line 5   The second level includes attributes descriptive of one or more attributes in the first level at a finer level of detail, while the first level includes attributes that together encompass all attributes of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5

The third claimed step is determining automatically the desirability to a user of the audio and/or video based upon jointly processing attributes of at least the first and second levels of the program information attribute hierarchy, and based upon jointly processing preferences of at least the first and second levels of the user attribute information hierarchy. *See, e.g.* Specification at p. 123 lines 6-14. These latter preferences each respectively include data selectively indicative of at least a first, a second, and a third option. The first option includes data indicative of the positive desirability of the respective preference, the second option includes data indicative of non-desirability of the respective preference, and the third option includes data indicative of indifference to the respective preference. *See, e.g.* Specification at p. 122 lines 12-18

In the fourth claimed step, the desirability of the audio and/or video is increased based upon any included program attribute corresponding to a preference that has data indicative of said the option, such desirability is decreased based upon an included program attribute corresponding to a preference that has data indicative of the second option, and such desirability is unaffected by any included program attribute corresponding to a preference that has data indicative of the third option. *See, e.g.* Specification at p. 124 line 11 – p. 125 line 9

Independent claim 10:

In a second embodiment, as claimed in independent claim 10, a method for selecting at least one of audio and video may include four steps. The first step is receiving user attribute information that includes a plurality of preferences arranged in hierarchical levels including at least a first level and a second level where the first level has at least one preference and the second level has at least two preferences. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.   The second level of the hierarchy includes preferences descriptive of one or more preferences of the first level at a finer level of detail, while the first level of the hierarchy includes preferences that together encompass

all preferences of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The second claimed step is receiving a first plurality of program information corresponding to the audio and/or video, where the plurality of first program information includes attributes each corresponding to a respective one of the user preferences, and where the attributes of the first program information includes hierarchical levels with at least one attribute of the first program information at a first level and at least two attributes of the first program information at a second level dependent upon the at least one attribute of the first program information. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. Data at a second level of the hierarchy is included with data at the first level, while the first level includes attributes that together encompass all attributes of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The third claimed step is receiving a second plurality of program information corresponding to audio and/or video, where the plurality of second program information includes attributes each corresponding to a respective one of the user preferences, where the attributes of the plurality of second program information includes hierarchical levels with at least one attribute of the second program information at a first level and at least two attributes of the second program information at a second level dependent upon the at least one attribute of the second program information. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. Data at a second level of the hierarchy is included with data at the first level, while the first level includes attributes that together encompass all attributes of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The fourth claimed step is determining automatically the desirability of the audio and/or video based upon jointly processing attributes of at least the first level of the hierarchical levels of the program information with the second level of said hierarchical levels of said program information and jointly processing preferences of at least the first level of said hierarchical levels of said user attribute information with the second level of the hierarchical levels of said user attribute information to determine a relative ranking between said first program attribute

information and said second program attribute information. *See, e.g.* Specification at p. 123 lines 6-14.

Independent claim 25

In a third embodiment, as claimed in independent claim 25, a method for selecting at least one of audio and video may include three steps. The first step is receiving hierarchical user attribute information comprising user preferences, wherein the user preferences include a plurality of preference values, where at least one of the user preferences is at a first level and at least two of the user preferences is at a second level, and where the second level includes preferences descriptive of one or more preferences of said first level at a finer level of detail. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The second step is receiving hierarchical program attribute information corresponding to said at least one of an audio and a video, so that the hierarchical levels of the program attribute information include data at a second level included with data at a first level, wherein the first level includes attributes that together encompass all attributes of the second level, and where at least one of the program attribute information is at a first level and at least two of the program attribute information is at a second level dependent upon the at least one of the program attribute information at the first level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The third step is jointly processing data of at least the first level of the hierarchical levels of the program attribute information with the second level of the hierarchical levels of the program attribute information and jointly processing preferences of at least the first level of the hierarchical levels of the user preferences with the second level of the hierarchical levels of the user preferences to evaluate the user attribute information and the program attribute information to automatically determine: (i) a first score when a portion of the user attribute information matches a portion of the program attribute information, where the first score is based at least in part upon one of the preference values; (ii) a second score when another portion of the user attribute information matches another portion of said program attribute information and the second score is based at least in part upon one of the preference values; and (iii) a composite

score based, at least in part, upon the first score and the second score. *See, e.g.* Specification at p. 123 lines 6-14; *See, e.g.* Specification at p. 122 lines 12-18

Independent claim 50

In a fourth embodiment, as claimed in independent claim 50, a method for selecting at least one of audio and video may include four steps. The first step is receiving user attribute information corresponding to user preferences, wherein the preferences include negative preferences, and where at least one of the user preferences is at a first level and at least two of said user preferences is at a second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. The second level of user preferences includes preferences descriptive of one or more preferences of the first level at a finer level of detail. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The second claimed step is receiving program attribute information corresponding to the at least one of a first audio and first video, where at least one of the program attribute information is at a first level and at least two of the program attribute information is at a second level dependent upon said at least one of the program attribute information at the first level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. The first level includes attributes that together encompass all attributes of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The third claimed step is receiving program attribute information corresponding to at least one of a second audio and/or video.

The fourth claimed step is jointly processing preferences of at least the first level of the program attribute information with the second level of the program attribute information and jointly processing preferences of at least the first level of the attribute information with the second level of the user attribute information, so as to rank at least one of the first and second audio and/or video, in response to receiving the user attribute information and the program attribute information for said at least one of the first and second audio and/or video, based at least in part upon the negative preferences, wherein the negative preference results in decreasing

the ranking to a lower level than would have resulted had the negative preference not been included. *See, e.g.* Specification at p. 123 lines 6-14; *See, e.g.* Specification at p. 122 lines 12-18

Independent claim 57

In a fifth embodiment, as claimed in independent claim 57, a claimed method may include five steps. The first claimed step is receiving user attribute information corresponding to user preferences, wherein the user attribute information includes a plurality of preferences arranged in hierarchical levels so that data at a second level is included with data at a first level, and where at least one of the preferences is at a first level and at least two of the preferences is at a second level dependent upon the at least one of the preferences at the first level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. The first level includes preferences that together encompass all preferences of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The second claimed step is receiving program attribute information corresponding to the audio and/or video, wherein at least one of the program attribute information is at a first level and at least two of the program attribute information is at a second level dependent upon the at least one of the program attribute information at the first level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The third claimed step is jointly evaluating the first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and processing preferences of at least said first level of said hierarchical levels of said program information with the second level of the hierarchical levels of the user attribute information to evaluate the user attribute information and the program attribute information by: (i) determining a first value based upon, at least in part, whether a first portion of user attribute information matches a portion of program attribute information, and (ii) determining a second value based upon, at least in part, whether a second portion of the user attribute information matches a portion of the program attribute information. *See, e.g.* Specification at p. 123 lines 6-14; *See, e.g.* Specification at p. 122 lines 12-18

The fourth claimed step, contingent on whether at least one of the first value or the second value indicates non-desirability of the audio and/or video, discarding the at least one of the audio and video in response to receiving the user attribute information and the program attribute information for the audio and/or video, as being desirable to said user. *See, e.g.* Specification at p. 122 lines 12-18

The fifth claimed step, contingent on whether the audio and/or video is not discarded as a result of the preceding step, determining a third value based upon, at least in part, the first value and the second value; *See, e.g.* Specification at p. 122 lines 12-18

Independent claim 60

In a sixth embodiment, as claimed in independent claim 60, method for selecting at least one of audio and video may include three steps. The first step is receiving user attribute information corresponding to user preferences, wherein the user attribute information includes a plurality of preferences arranged in hierarchical levels such that data at a second level is included with data at a first level, and the first level includes preferences that together encompass all preferences of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. At least one of the preferences of the user attribute information is at a first level and at least two the preferences of the user attribute information is at a second level dependent upon the at least one preference of user attribute information at the first level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5.

The second step is receiving program attribute information corresponding to at least one of the audio and/or video, wherein at least one attribute of the program attribute information is at a first level and at least two attributes of the program attribute information are at a second level, where the first level includes at least one attribute that together encompass all attributes of the second level. *See, e.g.* Specification at p. 100 lines 10-20; p. 102 lines 10-14; p. 103 line 16- p. 104 line 11; p. 106 line 19- p. 107 line 5. The attributes of the program attribute information are each associated with a respective preference of the user attribute information.

The third claimed step is, in response to receiving said user attribute information and said program attribute information, jointly evaluating preferences of at least the first level of program

attribute information with the second level of the program attribute information, and jointly evaluating preferences of at least the first level of the user attribute information with the second level of the user attribute information, to evaluate the audio and/or video based upon: (i)a first set of a plurality of preferences evaluated based upon a first operator; (ii) a second set of a plurality of preferences evaluated based upon a second operator; wherein (iii) the first set and the second set are evaluated independent of the number of preferences of the first set and the second set. *See, e.g.* Specification at p. 123 lines 6-14; *See, e.g.* Specification at p. 122 lines 12-18

GROUNDS FOR REJECTION TO BE REVIEWED UPON APPEAL

The grounds of rejection presented for review are: (1) whether claims 1-11, 13, 14, 25-27, 50-53, 57, and 60 are unpatentable under 35 U.S.C. § 103(a) as being unpatentable over Herz, U.S. Patent No. 6,020,883 in view of Finseth, U.S. Patent No. 6,754,906; and (2) whether claims 15, 28, 59, and 61-64 are unpatentable under 35 U.S.C. §103(a) over the combination of Herz and Finseth and in further view of Graves, U.S. Patent No. 5,410,334.

ARGUMENT

Group I (claims 1-11, 13, 14, 25-27, 50-53, 57, and 60)

A.   Objection to claims 1, 10, 25, 50, 57, and 60.

The Examiner objected to each of the independent claims, arguing that they define a hierarchy differently than that which is the ordinarily understood meaning of the term. The Examiner is incorrect, as the applicant is using the term "hierarchy" exactly as the word is typically used. For example, biologists classify all life according to a defined hierarchy, i.e. Kingdom, Phylum, Class, Order, Family, Genus, Species, where the Kingdom level (either plant or animal) is the broadest level at the top of the hierarchy and the species classifications are the narrowest level at the bottom. Every level down in this hierarchy further classifies the level above it into a plurality of sub-categories, e.g. human, ape, and chimpanzee species are more detailed classifications of the higher order primates. To the same effect, for example, the "animal" kingdom encompasses all of the various animals in its hierarchical sub-levels, regardless of class, order, species, etc.

The applicant's use of the term "hierarchy" is entirely consonant with this ordinary usage. First, the applicant specifies that a second level of a hierarchy describes the attributes of a first level at more detail. For example, a first level attribute may be "action" while the second level from the first level may specify "martial arts" and "war." As can be seen, this is no different from the ordinary structure of a hierarchy, described above. Similarly, the applicant specifies that the first level of a hierarchy encompasses all the attributes of the lower second level. Again, this structure is no different than the preceding example, where the "animal' kingdom at the first level encompasses all the assorted animal species at the lowest level.

B.   Rejection of claims 1-11, 13, 14, 25-27, 50-53, 57, and 60 under 35 U.S.C. § 103(a) as being unpatentable over the combination of Herz and Fiuseth.

In each of the applicant's filings, the applicant included several detailed arguments as to why the respectively cited combinations failed to disclose any of the claimed inventions. The present office action ostensibly addresses the applicant's arguments of record, but in each instance the Examiner either misconstrues the applicant's arguments, cites portions of the cited prior art that actually reinforce the applicants arguments, or misstates the disclosure of the prior art.

Independent claim 1 broadly claims a method that initially receives "user attribute information that includes user preferences" as well as available "program information" that includes "attributes each corresponding to a respective one of said user preferences." Claim 1 also specifies three additional features that pertain to the program attributes and user preferences. First, both the user "preferences" and the program "attributes" are each

> arranged in hierarchical levels including at least a first level and a second level where said second level of said (user preferences/ program attributes) includes (preferences/attributes) descriptive of one or more (preferences/attributes) of said first level at a finer level of detail, wherein said first level includes (preferences/attributes) that together encompass all (preferences/attributes) of said second level, and wherein at least one of said (preferences/attributes) is at a first level and at least two of said (preferences/ attributes) are at a second level.

Second, the user preferences are capable of indicating any selected one of a positive, negative, or neutral desirability, i.e. each preference can indicate that the user desires the

particular preference, is averse to the particular preference, or does not care. Third, the claimed method "jointly processes" the levels of the user "preferences", and "jointly processes" the levels of the program "attributes" so as to automatically "determine the desirability" to the user of available programming.

The Examiner asserts that the limitations of claim 1 are an obvious combination of Herz and Finseth. Specifically, the Examiner contends that Herz discloses all of the limitations of claim 1 *except* arranging the *program attributes* according to the claimed hierarchy, and that Finseth discloses this missing limitation. Thus, according to the Examiner's rejection, Herz allegedly discloses arranging the *user preferences* in the claimed hierarchy. As explained below, this is incorrect.

Before discussing the particulars of the prior art upon which claim 1 was rejected, the applicant notes that in prior filings, two separate arguments were made against the Examiner's rejection of claim 1. The first argument was that the Examiner had inconsistently applied the claim term "user preferences" to two *different* features of the cited primary reference to ostensibly contend that Herz disclosed preferences that were *both* arranged in the claimed hierarchy *and* were capable of being expressed in any of the claimed positive, negative, or neutral terms. In particular, the Examiner first argued that the claim term "preferences" reads on what Herz describes as a user's "moods", so as to aver that Herz discloses preferences that are arranged hierarchically. *See, e.g.* Office Action dated October 15, 2007 at p. 2. But in order to assert that Herz discloses preferences that receive favorable, unfavorable, or neutral values, the Examiner cites, not the moods disclosed by Herz, but actual preferences of Herz that are not arranged in the type of hierarchy claimed. *See* Id. at p. 4 (citing Herz at col. 10 lines 51-60 and col. 11 lines 6-12.) The applicant argued that this "bait and switch" tactic was impermissible, and that to properly support a prior art rejection of claim 1, the Examiner was required to cite to a *single* disclosed feature of Herz that could be considered a "user preference" and then show either that (1) Herz expressly disclosed that these ostensible "preferences" were both arranged in the claimed hierarchy and could indicate each of desirability, non-desirability, or neutrality; or (2) that it would be obvious to modify those "preferences of Herz to include both features.

Second, the applicant argued that, contrary to the Examiner's assertion, Herz failed to disclose the type of hierarchy particularly claimed in independent claim 1, i.e. one having a second level that includes preferences or attributes descriptive of those in the first level, but at a finer level of detail, and where the first level encompasses all the attributes of the second level..

The primary reference, Herz, discloses that a user of an audiovisual system, such as a consumer of television content, may have a number of profiles, each valid for specified periods of the day. *See Herz.* at col. 17 lines 26-64. Each profile comprises specific preference characteristics associated with that profile, i.e. preferences for "action" or "gore" or "drama" etc. These profiles are disclosed to be hierarchical in nature, but only in the sense that one profile may be valid for a time interval within that of a profile of a greater temporal width. Thus, any hierarchy of the profiles of Herz is a temporal hierarchy, i.e. a generic profile is the one having the greatest width of time in which it is valid, and may or may not include one or more other profiles within it, or may have a profile with a time period temporally overlapping the one of the generic profile.

Merely to explain the desirability and utility of these separate user profiles, Herz discloses that each profile may be generally considered, *in the abstract*, to correspond to a particular mood in which the user predictably feels during certain intervals of the day. As part of that explanatory disclosure, Herz describes hypothetical moods such as "peaceful" "violent" "speculative", and the like, showing that each such mood may be embodied by a separate user profile, which *itself includes* a respective set of user preferences. These profiles, according to Herz, can (and should) be distinguished from each other in a system that seeks to accurately predict what a user might wish to see at a particular point in time.

To be clear, however, while Herz discusses these "moods", the automated system disclosed therein does not identify or distinguish them as such – the profiles of Herz are in fact, specifically identified solely in numerical terms, i.e. profile 1, profile 2, etc, and they are distinguished from each other solely by the respective content characteristics (i.e. the real preferences) contained therein, along with the time interval for which the profile is active.

As noted above, Herz does disclose preferences, and to the extent that those preferences are assigned into one or more respective profiles that are themselves arranged hierarchically,

then the preferences of Herz are also arranged hierarchically. The question to be resolved, however, is whether the hierarchy claimed in independent claim 1 reads on this arrangement of Herz. Specifically, claim 1 first requires that the preferences hierarchy include "at least a first level and a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail." Plainly, this limitation does not read on the hierarchy into which the preferences of Herz are arranged. For example, assume that a generic profile/mood of Herz were to include the preferences of Action, Drama, R-rated, PG-rated, Comedy, and Stereo. This generic profile, having the largest time interval would presumably include the broadest variety of preferences. A narrower time window, i.e. a second level in the hierarchy might include Action, PG-Rated, and Surround Sound. The preferences of the second level are not descriptive of those in the first level at a finer level of detail.

Similarly, claim 1 also requires that the first level include "preferences that together encompass all preferences of said second level." As noted in the example previously, Herz does not disclose such a hierarchy. As a further example, a user of the system of Herz may always like Westerns, Drama, and movies having a PG or lower rating, hence set a first profile valid for all hours of the day including those preferences. The same user may also establish a narrower time window, e.g. from 8pm to 4am in which R-rated and horror movies are also preferred, so that young children do not watch such content. Thus, Herz does not disclose, either expressly, inherently, or implicitly, the claim limitation that the preferences of the first level together encompass all preferences of the second level.

These arguments are already of record, and though the Examiner ostensibly addresses them at pages 2-4 of the Office Action dated February 22, 2008, and pages 2-7 of the Office Action dated October 30, 2008, each of the Examiner's rebuttals misses the points respectively made by the applicant. First, the Examiner responds to the applicant's argument that the "moods" disclosed by Herz are analogous to profiles rather than preferences by asserting that "the moods [of Herz] can be assigned to a user in the initial survey filled out by the user." However, the disclosure cited by the Examiner actually supports the *applicant's* argument:

> The *definition* of moods can be *the responsibility of the customer*. When
> ballots are used to create the initial customer *profiles*, each ballot may

correspond to a mood. In other words, *a mood may be equivalent to a customer profile.* The generic customer profile is required . . . . Beyond that, the customer can fill out as many ballots as he/she likes to establish specific moods.

Herz at col. 17 line 65 – col. 18 line 5 (emphasis added). Thus, contrary to the Examiner's assertion, moods such as "violent" or "speculative" are not *assigned* to a user during the balloting process by the system of Herz; instead, a user simply creates a profile, and the disclosure of Herz states nothing more than that a created profile may be *abstractly* considered to correspond to some mood of the user. That mood, though perhaps known to the customer, is only identifiable by the automated system of Herz in terms of whatever specific preferences included in the profile. The system of Herz is unable to distinguish a "speculative" mood from a "peaceful" mood as such, or a "violent" mood from an "excited" mood, etc., and hence does not structurally arrange the preferences therein hierarchically according to "moods." The structural hierarchy of the profiles of Herz are by time window only.

The Examiner also argues that it "is the Examiner's interpretation that [the passage quoted in the preceding paragraph] refers to an alternative embodiment and the portions cited by the Examiner disclose a preference and not a profile." *See* Final Office Action dated October 30, 2008 at p. 4. This response turns the Examiner's obligation to establish a prima facie case of obviousness on its head. For the Examiner's rejection to stand, it must be first shown that the prior art teaches the all claimed limitations. If the Examiner contends that the foregoing passage relating "moods" to profiles is an "alternative" embodiment, then the Examiner should cite to a passage of Herz that *teaches* that the moods are preferences that have positive, negative values, etc., as opposed to profiles containing such preferences. The Examiner has not done so, merely alleging that the "numerical value[s taught in col. 10 lines 51-60 of Herz"] as interpreted by the Examiner *can be* assigned to the moods as taught by Herz. *See* Id. at p. 3. (emphasis added) This rationale is inappropriate; the Examiner must show a *teaching* in Herz that the moods (i.e. what the Examiner claims are preferences) are assigned numerical values, and not merely allege, with hindsight of what the applicant is claiming, that the *could be*. Furthermore, the applicant disagrees that the moods of Herz even could be assigned the positive and negative numerical values claimed. As noted earlier, Herz only discloses moods as an *abstraction* from which to model profiles that *contain* preferences. Assuming, for example, that a user of Herz' system sets

up a profile corresponding to a peaceful mood, exactly what would a "negative" value signify in relation to a "positive" value? The Examiner's analysis does not proceed to such a level, instead simply asserting that the numerical values that Herz assigns characteristics within profiles, could be assigned to the "moods" of Herz instead, without explaining how that is feasible and what benefit would be achieved.

The Examiner addresses the applicant's hypothetical example, made in a prior amendment, of a first Herz *profile* including the preferences for "action" "violence" and "R-rated" from 7:00 to 11:00 p.m., and a second Herz *profile* including the preferences of "news" "documentaries" "weather" from 5:00 pm to 8:00 pm, etc. The applicant pointed out that in such an example, none of the substantive characteristics of the profiles would overlap, hence would not disclose the applicant's limitations that the first hierarchical level of preferences encompass all the preferences of the second level. The Examiner's response is first to assert that the "example used by the applicant refers to the genre preferences and not the moods." *See* Office Action dated February 22, 2008 at pp. 2-3. This assertion by the Examiner is false on its face; as noted earlier the "moods" of Herz are the equivalent of profiles, each containing preferences, *exactly* as the applicant structured the foregoing example. The applicant is also puzzled by this rebuttal by the Examiner, given that it is the Examiner's very position that the claim term "preferences", whether genre preferences or otherwise, *reads on* the moods of Herz. It makes little sense for the Examiner to then object on the basis of some distinction between "moods" and "preferences" once the applicant notes that the moods of Herz are not arranged in the type of hierarchy claimed by the applicant.

The Examiner also contends that "the moods [of Herz] are hierarchical as they are nested." This contention misses the point. The moods or profiles of Herz are *nested only by time window*, i.e. a first profile occupying a time window of 8:00 am to midnight might have a nested profile from 5:00 pm to 7:00 pm beneath it. The applicant, however, did not simply claim preferences that were hierarchically arranged, but instead further defined the claimed hierarchy by limitations that do not read on the *temporal* nesting of Herz. In a rebuttal, The Examiner argues that the features of the preferences not being arranged temporally are not claimed, and that the applicant's argument is therefore not relevant. *See* Office Action dated October 30, 2008.

This rebuttal is not responsive to the applicant's point which is that the claimed hierarchy does not read on the temporal nesting of Herz. The Examiner does not address this point.

The Examiner also stated that:

> The applicant argues that the moods disclosed by Herz cannot be considered preferences as specific values cannot be assigned to them. Herz discloses that the moods can be assigned a higher value, depending on how many subsets of moods are used (col. 18 lines 6-17). Also, as Herz discloses that preference information can be assigned a negative value (col. 10 lines 31-63) and the Examiner interprets this example [as] corresponding to the moods, as a violent mood would cause a romantic comedy to receive a negative rating for that time period.

See Office Action dated February 22, 2008 at p. 3. At the outset, the Examiner seriously misconstrued the applicant's argument to which this rebuttal is addressed. The applicant had argued that Herz discloses profiles (or moods) that contain preferences, and that the Examiner was attempting to read the applicant's claim term "preferences" *first* on the profiles of Herz (because the profiles are hierarchical) but then switched midstream to later cite the disclosure of Herz relating to the *content preferences within the profiles* so as to find the claim limitation of *positive/negative values*. Specifically, the applicant argued that

> the Examiner is inconsistently applying the claim term "preferences" - first to the moods/profiles of Herz, but later to the specific characteristics within those moods/profiles that are assigned values. This inconsistent claim reading is self-contradictory. Initially, the Examiner asserts that the claim term "preferences" are disclosed by Herz's moods, and argues that these moods are arranged hierarchically. But the moods of "peaceful", "speculative" or "violent" are not assigned selective ones of Herz's positive or negative values – *it is the characteristics within these profiles that are assigned such values*. Thus, for the Examiner to find in the prior art applicant's later limitations regarding expressing preferences either in positive, negative, or neutral terms, the Examiner foregoes the earlier assertion that it is the "moods" of Herz that are the claimed "preferences" and instead redefines that term as reading upon the specified content characteristics contained within those moods. An Examiner's rejection, however, cannot be premised on such a flexible approach to claim interpretation. The Examiner is required to pick one of these mutually exclusive interpretations of the term "preferences" and apply it *consistently throughout the entire claim.*

Thus, the applicant did not simply argue that the "moods" of Herz cannot be assigned specific values, the applicant argued that the moods of Herz did not take on both positive and negative values. Furthermore, the Examiner's own rebuttal once again proves the applicant's point. The first passage of Herz cited by the Examiner, i.e. col. 18 lines 6-16 discloses "satisfaction factors" that begin with a value of "1" for the generic profile – the profile with the broadest profile, and are otherwise inversely proportional to the size of the time window for other profiles. Thus, the satisfaction factor of a profile *must be greater than or equal to 1*, and therefore does not disclose a preference being assigned a "negative value."

The second passage of Herz cited by the Examiner, i.e. col. 10 lines 31-63 does disclose positive and negative values, but these values are assigned to the individual content preferences within the profiles of Herz, exactly as previously argued by the applicant. The Examiner may be conflating these two disclosures to somehow argue that a negative value attached to a preference would somehow affect the satisfaction factor of the profile to which it is included. Herz in fact contradicts this position; the satisfaction factor is solely a function of the length of the time window of the profile to which is it associated, and is *always positive.*

Similarly, the Examiner's assertion that a "violent mood would cause a romantic comedy to receive a negative rating for that time period" (See Office Action dated February 22, 2008 at p. 3) is neither relevant, nor supported by any actual disclosure in Herz. First, the system of Herz has no way of identifying a "violent" mood as such, but instead must solely rely on the respective ratings of the specific content preferences in the profiles valid for the pending time slot. Second, the claim limitation at issue requires "preferences" that are selectively assigned positive or negative values.[1] The Examiner seems to be arguing that a "violent" mood might

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[1] Again, the applicant does not contest that Herz discloses "preferences" that are capable of being assigned positive and negative values, but it is the Examiner who *chooses not* to read the *claimed* term "preferences" on the "preferences" as defined by Herz, because the latter are not organized in a hierarchical fashion. Instead, the Examiner elects to read the claimed term "preferences" on the *profiles* or "moods" of Herz, so as to contend that Herz discloses preferences arranged hierarchically (though as noted earlier, not in the specific hierarchy claimed). The cited portion of Herz at col. 10 lines 31-63 is *not relevant* because it does not teach limitations relating to the values attached to the moods/profiles of Herz, e.g. the satisfaction factor. For example, if a profile or mood of Herz were to include five preferences, two with negative ratings, and three with positive ratings, the rating or value of the profile itself (satisfaction factor or otherwise) has no relationship whatsoever to the values of the preferences it contains.

cause a *delivered program* to be assigned a negative value. *See, e.g.* office Action dated October 30, 2008 at p. 6 (*"programming* that does not match that mood *would be passed over or assigned a negative value"*)(emphasis added), but this has no bearing on which is claimed. For the Examiner's analogy to make sense, there must be some disclosure in Herz that would assign a negative value *to the "violent" profile itself* and not the programming that is not automatically selected by the profile. The Examiner has not cited such a disclosure in Herz, as that reference does not contain it.

The Examiner also states that:

> The applicant argues that the moods disclosed by Herz are not hierarchical as they do not encompass the moods of which they are a subset. As Herz discloses where the moods are subsets of each other (column 17 lines 52-61), the Examiner interprets this as each mood including the preference from the mood above it, as without this structure there would be no reason to have the moods be a subset of each other.

See Office Action dated February 22, 2008 at p. 3.

Here the Examiner seems to interpret the applicant's claim limitation *backwards*. As claimed, the higher order level (the first level) must include preferences that together encompass all preferences of the level below it (the second level). The Examiner is arguing that the lower level profile of Herz (the one with the narrower time window) must include all the preferences of the higher level profile (the one with the broadest time window). First, as just noted, the Examiner's argument is not directed to the arrangement claimed. Second, the Examiner's argument is illogical; the mere fact that the preferences of the first profile (the one with the broadest time window) are still *operative* while the second profile is *also operative*, is not indicative of a *structural arrangement* where one profile includes preferences encompassing all those of the other profile. This claimed structural arrangement is not disclosed by Herz.

Finally, the applicant notes that the Examiner appears to be misinterpreting the claim language of "jointly processing" the respective preferences of the first and second levels of the user preferences, and "jointly processing" the respective preferences of the first and second levels of the program attributes, as instead claiming "jointly processing" the preferences with the program attributes. *See* Office Action dated February 22, 2008 at p. 7 (arguing that the

combination of Herz and Finseth disclose the limitations claimed because the program attributes of Finseth would be included in the agreement matrix of Herz). This is not what is being claimed.

For each of the foregoing reasons, independent claim 1 is patentably distinguished over the cited prior art, and the applicant respectfully requests that the rejection of this claim be withdrawn.

Each of claims 10, 25, 50, 57, and 60 includes limitations that distinguish the respective claims for reasons already discussed with respect to claim 1. All remaining claims of Group 1 depend from one of these independent claims. The applicant therefore respectfully requests that the rejection of these claims be overturned.

GROUP II (claims 15, 28, 59, and 61-64)

Each of these dependent claims depends form a respective one of independent claims 1, 10, 25, 50, 57, and 60, and are therefore patentably distinguished over the cited prior art for the same reasons as the independent claim from which each respectively depends. The applicant thus requests that the respective rejections of the claims of Group II be wikthdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, the applicant respectfully requests that the Examiner's rejection of claims 1-11, 13-15, 25-28, 50-53, 57 and 59-64 be reversed.

Respectfully submitted,

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CLAIMS APPENDIX

1. A method for selecting at least one of audio and video comprising:

(a)   receiving user attribute information that includes user preferences arranged in hierarchical levels including at least a first level and a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said preferences is at a first level and at least two of said preferences are at a second level;

(b)   receiving program information corresponding to said at least one of said audio and video, where said program information comprises attributes each corresponding to a respective one of said user preferences, where said program information attributes include hierarchical levels including at least a first level and a second level where said second level of said program information attributes includes attributes descriptive of one or more attributes in said first level at a finer level of detail, wherein said first level includes attributes that together encompass all attributes of said second level, and wherein at least one of said program information attributes is at a first level and at least two of said program information attributes is at a second level;

(c)   determining automatically the desirability to a user of said at least one of said audio and video based upon jointly processing attributes of at least said first level of said hierarchical levels of said program information with said second level of said hierarchical levels of said program information attributes and jointly processing preferences of at least said first level of said hierarchical levels of said user attribute information with said second level of said hierarchical levels of said user attribute information, wherein said preferences each respectively include data selectively indicative of at least a first, a second, and a third option;

(i)   said first option including data indicative of the positive desirability of the respective said preference;

(ii)   said second option including data indicative of non-desirability of the respective said preference; and

(iii)   said third option including data indicative of indifference to the respective said preference; and

(d)   wherein desirability of said at least one of said audio and video is increased based upon any included program attribute corresponding to a preference that has data indicative of said first option, desirability of said at least one of said audio and video is decreased based upon an included program attribute corresponding to a preference that has data indicative of said second option, and desirability of said at least one of said audio and video is unaffected by any included program attribute corresponding to a preference that has data indicative of said third option.

2.   The method of claim 1 wherein said first option is a non-binary preference value.

3.   The method of claim 1 wherein said second option is a non-binary preference value.

4.   The method of claim 1 wherein said first option is positive preference value.

5.   The method of claim 1 wherein said second option is a negative preference value.

6.   The method of claim 1 wherein said preferences are adjustable by a user.

7.   The method of claim 1 wherein said preferences include at least one default value.

8.   The method of claim 7 wherein said preferences are adjustable by a user.

9.   The method of claim 1 wherein said determining results in a value.

10.   A method for selecting at least one of audio and video comprising:

(a)   receiving user attribute information that includes a plurality of preferences arranged in hierarchical levels including at least a first level and a second level where said second level of said user preferences includes preferences descriptive

of one or more preferences of said first level at a finer level of detail, wherein said first level includes preferences that together encompass all preferences of said second level, and wherein at least one of said preferences is at a first level and at least two of said preferences are at a second level;

(b)   receiving a first plurality of program information corresponding to said at least one of said audio and video, where said plurality of said first program information includes attributes each corresponding to a respective one of said user preferences, where said attributes of said first program information includes hierarchical levels so that data at a second level is included with data at a first level, wherein said first level includes attributes that together encompass all attributes of said second level, wherein at least one attribute of said first program information is at a first level and at least two attributes of said first program information is at a second level dependent upon said at least one attribute of said first program information at said first level;

(c)   receiving a second plurality of program information corresponding to said at least one of said audio and video, where said plurality of said second program information includes attributes each corresponding to a respective one of said user preferences, where said attributes of said plurality of said second program information includes hierarchical levels so that data at a second level is included with data at a first level, wherein at least one attribute of said second program information is at a first level and at least two attributes of said second program information is at a second level dependent upon said at least one attribute of said second program information at said first level; and

(d)   determining automatically the desirability of said at least one of said audio and video based upon jointly processing attributes of at least said first level of said hierarchical levels of said program information with said second level of said hierarchical levels of said program information and jointly processing preferences of at least said first level of said hierarchical levels of said user attribute information with said second level of said hierarchical levels of said user attribute information to determine a relative ranking between said first program attribute information and said second program attribute information.

11. The method of claim 10 wherein said determining the desirability includes:

(a) calculating a first ranking value for said first program attribute information;

(b) calculating a second ranking value for said second program attribute information; and

(c) determining said relative ranking based upon said first ranking value and said second ranking value.

12. (Canceled).

13. The method of claim 10 wherein said determining the desirability includes and operation where,

(a) said first program attribute information includes a first attribute and free from a second attribute;

(b) said second program attribute information includes said first attribute and said second attribute; and

(c) said determining said relative ranking indicates said second program as more desirable than said first program.

14. The method of claim 10 wherein said determining the desirability includes and operation where,

(a) said first program attribute information includes a first attribute and free from a second attribute;

(b) said second program attribute information includes said first attribute and a relatively smaller presence of said second attribute in comparison to said first attribute; and

(c) said determining said relative ranking indicates said second program as more desirable than said first program.

15. The method of claim 10 wherein said determining the desirability includes and operation where:

(a)   said first program attribute information includes a first attribute and a second attribute, where said second attribute has a first relatively smaller presence than said first attribute in said first program;

(b)   said second program attribute information includes said first attribute and said second attribute, where said second attribute has a second relatively smaller presence than said first attribute in said second program, where said first relatively smaller presence is smaller than said second relatively smaller presence; and

(c)   said determining said relative ranking indicates said second program as more desirable than said first program.

16-24. (Canceled).

25.   A method for selecting at least one of audio and video comprising:

(a)   receiving hierarchical user attribute information comprising user preferences, wherein said user preferences include a plurality of preference values, wherein at least one of said user preferences is at a first level and at least two of said user preferences is at a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail;

(b)   receiving hierarchical program attribute information corresponding to said at least one of an audio and a video, so that said hierarchical levels of said program attribute information include data at a second level included with data at a first level, wherein said first level includes attributes that together encompass all attributes of said second level, and wherein at least one of said program attribute information is at a first level and at least two of said program attribute information is at a second level dependent upon said at least one of said program attribute information at said first level; and

(c)   jointly processing data of at least said first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and jointly processing preferences of at least

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said first level of said hierarchical levels of said user preferences with said second level of said hierarchical levels of said user preferences to evaluate said user attribute information and said program attribute information to automatically determine:

    (i)   a first score when a portion of said user attribute information matches a portion of said program attribute information and said first score is based at least in part upon one of said preference values;

    (ii)   a second score when another portion of said user attribute information matches another portion of said program attribute information and said second score is based at least in part upon one of said preference values;

    (iii)   a composite score based, at least in part, upon said first score and said second score.

26.   The method of claim 25 wherein said evaluating is free from combining multiple preference values into a single composite preference value.

27.   The method of claim 25 wherein a said composite score is determined for a plurality of said videos, and said video are ranked based, at least in part, upon said composite scores.

28.   The method of claim 25 wherein said composite score is determined free from comparing said first score and said second score.

29-49. (Canceled).

50.   A method for selecting at least one of audio and video comprising:

(a)   receiving user attribute information corresponding to user preferences, wherein said preferences include negative preferences, wherein at least one of said user preferences is at a first level and at least two of said user preferences is at a second level where said second level of said user preferences includes preferences descriptive of one or more preferences of said first level at a finer level of detail;

(b)   receiving program attribute information corresponding to said at least one of a first audio and first video, wherein at least one of said program attribute information is at a first level and at least two of said program attribute information is at a second level dependent upon said at least one of said program attribute information at said first level wherein said first level includes attributes that together encompass all attributes of said second level;

(c)   receiving program attribute information corresponding to said at least one of a second audio and second video; and

(d)   jointly processing preferences of at least said first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and jointly processing preferences of at least said first level of said hierarchical levels of said user attribute information with said second level of said hierarchical levels of said user attribute information to rank said at least one of said first audio and first video, and, said at least one of said second audio and second video, in response to receiving said user attribute information and said program attribute information for said at least one of said first audio and first video, and, said at least one of said second audio and second video, at least in part, upon said negative preferences, wherein said negative preference results in decreasing said ranking to a lower level than would have resulted had said negative preference not been included.

51. The method of claim 50 wherein said ranking determines said first video as more desirable for said user than said second video.

52.   The method of claim 51 wherein said ranking determines said second video as more desirable for another user than said first video.

53.   The method of claim 50 wherein said ranking is in a relativistic manner.

54-56 (Canceled).

57.   A method for selecting at least one of audio and video comprising:

(a)   receiving user attribute information corresponding to user preferences, wherein said user attribute information includes a plurality of preferences, wherein said preferences include hierarchical levels so that data at a second level is included with data at a first level, wherein at least one of said preferences is at a first level and at least two of said preferences is at a second level dependent upon said at least one of said preferences at said first level wherein said first level includes preferences that together encompass all preferences of said second level;

(b)   receiving program attribute information corresponding to said at least one of an audio and video, wherein at least one of said program attribute information is at a first level and at least two of said program attribute information is at a second level dependent upon said at least one of said program attribute information at said first level;

(c)   jointly evaluating said first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and processing preferences of at least said first level of said hierarchical levels of said program information with said second level of said hierarchical levels of said user attribute information to evaluate said user attribute information and said program attribute information by:

(i)   determining a first value based upon, at least in part, whether a first portion of said user attribute information matches a portion of said program attribute information, and

(ii)   determining a second value based upon, at least in part, whether a second portion of said user attribute information matches a portion of said program attribute information;

(d)   if at least one of said first value or said second value indicates non-desirability of said at least one of audio and video, discarding said at least one of said audio and video in response to receiving said user attribute information and said program attribute information for said at least one of said audio and video, as a desirable said at least one of audio and video for said user;

(e)   if said at least one of audio and video is not discarded as a result of step (d) then determining a third value based upon, at least in part, said first value and said second value.

58.   (Canceled)

59.   The method of claim 57 wherein said evaluating is based upon an AND operation.

60.   A method for selecting at least one of audio and video comprising:

(a)   \receiving user attribute information corresponding to user preferences, wherein said user attribute information includes hierarchical levels, wherein said user attribute information includes a plurality of preferences, wherein said user information includes said hierarchical levels so that data at a second level is included with data at a first level, wherein said first level includes preferences that together encompass all preferences of said second level wherein at least one of said preferences of said user attribute information is at a first level and at least two said preferences_of said user attribute information is at a second level dependent upon said at least one said preference of said user attribute information at said first level;

(b)   receiving program attribute information corresponding to said at least one of an audio and a video, wherein at least one attribute of said program attribute information is at a first level and at least two attributes of said program attribute information are at a second level, said attributes of said program attribute information each associated with a respective preference of said user attribute information, wherein said first level includes at least one attribute that together encompass all attributes of said second level; and

(c)   jointly evaluating preferences of at least said first level of said hierarchical levels of said program attribute information with said second level of said hierarchical levels of said program attribute information and jointly evaluating preferences of at least said first level of said hierarchical levels of said user attribute information with said second level of said hierarchical levels of said user attribute information

to evaluate said at least one of said audio and video, in response to receiving said user attribute information and said program attribute information based upon,

(i)   a first set of a plurality of preferences wherein said first set is evaluated based upon a first operator;

(ii)   a second set of a plurality of preferences wherein said second set is evaluated based upon a second operator;

(iii)   wherein said first set and said second set are evaluated independent of the number of preferences of said first set and said second set.

61.   The method of claim 60 wherein at least one of said first operator and said second operator is an "OR" function.

62.   The method of claim 60 wherein said first operator and said second operator are "OR" functions.

63.   The method of claim 60 wherein said first set and said second set depend from the same preference within said hierarchy.

64.   The method of claim 63 wherein said first set and said second set have a different number of preferences.

65-69 (Canceled).

EVIDENCE APPENDIX:

None.

RELATED PROCEEDINGS APPENDIX:

None.